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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KATE MCLELLAN, TERESA BLACK,  
DAVID URBAN, ROB DUNN, RACHEL  
SAITO, TODD RUBINSTEIN, RHONDA  
CALLAN, JAMES SCHORR, BRUCE  
MORGAN, and AMBER JONES, Individually  
and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

JUDITH LANDERS, LISA MARIE BURKE,  
and JOHN MOLENSTRA, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

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Case Nos. 16-cv-00036-JD; 16-cv-00777-JD

**DECLARATION OF ROB DUNN IN  
SUPPORT OF PLAINTIFFS'  
OPPOSITION TO FITBIT, INC.'S  
MOTION TO COMPEL ARBITRATION**

The Honorable James Donato

1 I, Rob Dunn, declare as follows:

2 1. I am a plaintiff in the above-captioned action.

3 2. I purchased two Fitbit Charge HRs on December 26, 2015, one from Bed Bath &  
4 Beyond and another from Best Buy, both located in Yuma, Arizona.

5 3. My Charge HR cannot consistently record accurate heart rate. During exercise, it  
6 is typically inaccurate by very significant margins, making it useless for the purposes for which I  
7 bought it. Had Fitbit disclosed this fact to me at the time of purchase, I would not have bought  
8 the Fitbit Charge HR or would have paid less for it.

9 4. At or before the time of purchase, Fitbit never informed me—nor did I have any  
10 reason to think—that I would need to set up an online account to render basic features of my  
11 Fitbit Charge HR operational. This fact was not mentioned on the product packaging or at any  
12 other place or time before or during my purchase of the Fitbit Charge HR.

13 5. At or before the time of purchase, Fitbit never informed me—nor did I have any  
14 reason to think—that I would need to agree to additional terms of service, including an agreement  
15 to arbitrate, in order to set up an online account, or to otherwise render my Fitbit Charge HR  
16 operational. This fact was not mentioned on the product packaging or at any other place or time  
17 before or during my purchase of the Fitbit Charge HR.

18 6. Only after removing my Fitbit Charge HR from its packaging, and attempting to  
19 use it, did I learn for the first time that it would work only if I created an online account and  
20 accepted additional terms of service. I began the process of creating an online account by visiting  
21 the Fitbit website ([www.fitbit.com](http://www.fitbit.com)). By the time I was presented with a hyperlink to the Terms of  
22 Service during the account creation process, I was already on the Fitbit website.

23 7. The first section of Fitbit's Terms of Service provides: "If you do not have an  
24 account, you accept these Terms by visiting [www.fitbit.com](http://www.fitbit.com) (<https://www.fitbit.com>) or using  
25 any part of the Fitbit Service." To me, this means that before I was ever presented with the Terms  
26 of Service, I was deemed by Fitbit to already have agreed to them. In other words, I did not have  
27 any meaningful option to decline Fitbit's Terms of Service, since Fitbit told me I was already  
28 bound simply by visiting the Fitbit website.

